

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

G.D. SEARLE LLC and PFIZER ASIA
PACIFIC PTE. LTD.,

Plaintiffs,

v.

Civil Action No. 2:13-cv-121

LUPIN PHARMACEUTICALS, INC.,
TEVA PHARMACEUTICALS USA, INC.,
MYLAN PHARMACEUTICALS INC.,
WATSON LABORATORIES, INC.,
APOTEX INC., and
APOTEX CORP.,

Defendants.

**PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED
FINAL JUDGMENT UNDER FED. R. CIV. P. 54(b)**

Plaintiffs G.D. Searle LLC and Pfizer Asia Pacific Pte. Ltd. (collectively, "Pfizer") submit these objections to the proposed Final Judgment Under Fed. R. Civ. P. 54(b) filed in the above-captioned case (Doc. 357-1) by defendants Lupin Pharmaceuticals, Inc., Teva Pharmaceuticals USA, Inc., Mylan Pharmaceuticals Inc., Watson Laboratories, Inc., Apotex, Inc., and Apotex Corp. (collectively, "Defendants").

Pursuant to the Order of this Court entered on March 12, 2014 (Doc. 351), Pfizer submitted a proposed judgment stating that the '048 patent is invalid under 35 U.S.C. § 251 and on the basis of obviousness-type double patenting and denying Pfizer's request for an injunction pursuant to 35 U.S.C. § 271. (Doc. 353, Ex. 1).

Pfizer objects to Defendants' proposed judgment (Doc. 357-1) on several grounds.

First, paragraphs 5 and 6 of Defendants' proposed judgment contain statements related solely to the timing of post-judgment submissions on costs and attorneys' fees, which are governed by Fed. R. Civ. P. 54(d). (Doc. 357-1). As such, the timing of those post-judgment submissions is not properly a subject of the judgment and should not be contained in any document entered by the Clerk. Moreover, Defendants have filed a separate motion seeking an extension of the time for post-judgment submissions which this Court should take up and decide separately. (Joint Mot. for a Deferred Schedule for Post-Judgment Submissions) (Doc. 355).

Second, there is no basis for Defendants' proposed judgment to be styled as a judgment under Fed. R. Civ. P. 54(b). As set forth in Rule 54(b):

When an action presents more than one claim for relief—whether as a claim, counterclaim, cross-claim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

The purpose of a Rule 54(b) judgment is “to prevent piecemeal appeals when multiple claims are resolved in the course of a single lawsuit” and to “provide relief to litigants that would suffer undue hardship if final judgment is not entered on the adjudicated claim prior to the resolution of the unadjudicated claims.” *Braswell Shipyards, Inc. v. Beazer East, Inc.*, 2 F.3d 1331, 1334 (4th Cir. 1993). In this case, while Defendants' seek a proposed judgment under Rule 54(b), Defendants have not identified what, if any, claims remain to be adjudicated by the Court. Accordingly, Pfizer objects that there is no basis for the statements in paragraph 4 of Defendants' proposed judgment (Doc. 357-1) and there is no basis for entry of Defendants' proposed judgment as styled under Rule 54(b).

Finally, Pfizer objects to the inclusion of the following language at the end of paragraph 3 of Defendants' proposed judgment: "Defendants' accused products cannot infringe the '048 patent." (*See* Doc. 357-1). This language is ambiguous and unnecessary in view of the rest of paragraph 3 of Defendants' proposed judgment: "Because the '048 patent is invalid, Plaintiffs' Complaint is dismissed with prejudice, Plaintiffs' request for an injunction pursuant to 35 U.S.C. § 271 is denied." (*See* Doc. 357-1). Moreover, as noted in the Court's summary judgment decision, "Defendants acknowledge that selling their generic celecoxib products together with their proposed package inserts would induce users to directly infringe claims 19-25 of the '048 patent. There exists no *genuine* dispute as to Defendants' specific intent to induce infringement." (Order 17 n. 6) (Doc. 355).

For these reasons, Pfizer respectfully requests that the Court enter Pfizer's proposed judgment (Doc. 353-1).

Dated: April 2, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically e-mail notification of such filing to:

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